

EXHIBIT 1

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 SHORELINE AVIATION, INC.,
6 Plaintiff,

7 -against-

Case No.
2:20-cv02161
JMA-SIL

8
9 CYNTHIA L. HERBST, SOUND AIRCRAFT
10 FLIGHT ENTERPRISES, INC., RYAN A.
11 PILLA, BLADE URBAN AIR MOBILITY,
12 INC., a/k/a FLY BLADE, INC., MELISSA
13 TOMKIEL, and ROBERT S. WIESENTHAL,

14 Defendants.
15 -----X

16 March 30, 2022
17 10:20 a.m.
18 Virtual Zoom

19 DEPOSITION of CYNTHIA L. HERBST, a
20 Defendant herein, taken by the Plaintiff,
21 pursuant to Rule 30(B)(6) of the Federal Rules
22 of Civil Procedure, and Notice, held at the
23 above-mentioned time and place, before Susan
24 Crane, a Notary Public of the State of New York.
25

1 C. Herbst

2 knowledgeable about these topics?

3 A I am.

4 Q Can you briefly describe your
5 educational background?

6 A My education? Well, obviously
7 elementary school. High school; I graduated
8 from Mercy High School. I attended Suffolk
9 Community College but did not complete college.
10 I went to a trade school in Florida with
11 relation to travel.

12 Q What year was that, that you
13 completed your studies at the trade school in
14 Florida?

15 A 1982.

16 Q Can you briefly describe your
17 employment history from 1982 through 1994?

18 A 1982, gosh, graduated high school.
19 I was employed by the Long Island Fishermen or
20 East End Litho which is a small company in Sag
21 Harbor that was a printing facility for the Long
22 Island Fishermen magazine. I was in the
23 subscription department there.

24 I was briefly living in Colorado
25 in late 1982 to 1983 or '83 to '84. I worked at

1 C. Herbst

2 a couple of different places out in Colorado.

3 In 1984 I returned back to New York and I worked
4 at the company called East Hampton Air that was
5 at East Hampton Airport.

6 After that I briefly worked for a
7 software developer part-time in a computer store
8 in Southampton doing CAD work. After that --
9 actually I worked '84 to '87 at the East Hampton
10 Airport for East Hampton Air. I worked in '87
11 to around '90 for the computer store and
12 computer software developer, and I was back at
13 East Hampton Airport in 1990 after forming the
14 corporation Sound Aircraft Services. From '90
15 on I have been at the airport.

16 Q You formed Sound Aircraft Services
17 with your ex-husband Mr. Tuma?

18 A Yes.

19 Q I'm going to try to minimize the
20 personal questions that I ask you, but as I'm
21 sure you are aware, there is some aspect with
22 your divorce from Mr. Tuma that has become an
23 issue in this case. Have you ever been married
24 to anyone other than Mr. Tuma?

25 A No.

1 C. Herbst

2 Q When did you get married to
3 Mr. Tuma?

4 A 1997.

5 Q Did there come a time that you
6 were separated but not divorced?

7 A Yes.

8 Q When was that?

9 A 2016.

10 Q You are now divorced from
11 Mr. Tuma?

12 A I am.

13 Q When was that divorce finalized?

14 A April 2017. I want to say
15 April 27, 2017, and then I guess the judge
16 formalized it in July.

17 Q Of 2017?

18 A Yes.

19 Q Would you refer to that as a
20 divorce agreement with Mr. Tuma?

21 A Yes, a stipulation of settlement I
22 think it's referred to.

23 Q That was from July or August of
24 2017; is that correct?

25 A April. We signed April 27, 2017,

1 C. Herbst

2 and the judge formalized it in July. I don't
3 know the date, July 2017.

4 Q Thank you. I'm going to ask you
5 about litigation history. I understand you have
6 had some litigation with Mr. Tuma?

7 A Yes.

8 Q Is that ongoing?

9 A Yes.

10 Q How many lawsuits are pending
11 right now?

12 A I believe three.

13 Q Are those all in Suffolk County
14 Supreme Court?

15 A I believe two -- it's really hard.
16 Two I believe, and the other one is in
17 Riverhead, I believe. I'm sorry, is Suffolk
18 County Supreme Court the Islip location?

19 Q I don't want to answer your
20 questions. It is not a trick question. I will
21 represent to you that Suffolk County Supreme
22 Court is located in both Central Islip and
23 Riverhead if that helps. Are you the plaintiff
24 in those lawsuits?

25 A In one I am. The other two I'm

1 C. Herbst

2 not.

3 Q Without revealing any
4 communications with counsel, is Mr. Foster
5 representing you in all three of those lawsuits?

6 A Yes, he is.

7 Q Again without revealing any
8 communications you may have had with him, does
9 Mr. Foster continue to represent you in this
10 present case that we are here for today?

11 A No, he really does not. Reid
12 does.

13 Q Is it fair to say Mr. Foster
14 represented you in the present lawsuit and there
15 came a time when you changed to Mr. Skibell?

16 A Yes, that's correct.

17 Q When you referred to Sound before,
18 that is Sound Aircraft Services, Inc.?

19 A I'm sorry, I don't remember what
20 my reference was. Are you talking employment?

21 Q Yes.

22 A Yes, Sound Aircraft Services, Inc.

23 Q That was set up in 1990?

24 A Yes.

25 Q You owned that together with

1 C. Herbst

2 Mr. Tuma?

3 A He was a hundred percent owner of
4 that.

5 Q Am I correct that there were
6 actually three separate entities?

7 A There are three separate entities,
8 yes.

9 Q One is Sound Aircraft Services,
10 Inc., sometimes referred to as SAS; is that
11 correct?

12 A Correct.

13 Q And the second one is SAFE?

14 A Correct.

15 Q And the third one is an auto
16 group; is that right?

17 A SAS Auto Group, yes.

18 Q All three of those were set up in
19 1990?

20 A No.

21 Q When was SAS set up?

22 A SAS, Sound Aircraft Services was
23 set up in 1990. Sound Aircraft Flight
24 Enterprises was set up in 1992, and SAS Auto
25 Group I believe was set up in 2016. It could be

1 C. Herbst

2 2015 for SAS Auto Group. I'm sorry, I don't
3 have that exact date.

4 Q With all questions it's just to
5 the best of your recollection. When SAS was set
6 up in 1990, initially Mr. Tuma was the one
7 hundred percent owner?

8 A Yes.

9 Q How about SAFE?

10 A One hundred percent owner.

11 Q What about SAS Auto Group?

12 A I'm one hundred percent owner.

13 Q Are you familiar with the term
14 respecting corporate formality?

15 A No.

16 Q Are you familiar with the idea
17 that if you have a corporation, there are
18 certain things you might be required to do in
19 terms of keeping separate bank accounts or
20 operating them distinctly as separate entities
21 from the individual who may own them? Are you
22 familiar generally with that concept?

23 A Generally I think I understand.

24 Q Do you have an understanding as to
25 whether that has occurred with those three

1 C. Herbst

2 entities that you described?

3 A Yes, I believe all three are
4 operated in that fashion.

5 Q Do they each have their own bank
6 account?

7 MR. KRIEGSMAN: Reid, if
8 you want to make an objection,
9 make sure it is on the record.

10 MR. SKIBELL: It was vague
11 in terms of time period.

12 MR. KRIEGSMAN: I'm glad I
13 heard it, that was a good
14 objection. I will withdraw that
15 and rephrase it.

16 Q Let me back up. When SAS and SAFE
17 were first set up, did you have any involvement
18 in setting them up?

19 A I did.

20 Q What was your involvement?

21 A I got the attorney and I gave the
22 information to the attorney of what we were
23 doing, and she formed the whatever paperwork
24 attorneys do to form the corporation.

25 Q What generally did SAS do?

1 C. Herbst

2 A When SAS was formed in 1990, it
3 was strictly an aircraft maintenance facility.

4 Q What does that generally entail?

5 A Performing maintenance services on
6 aircraft whether it be annual inspections,
7 repairs, tire changes, maintenance as if you
8 would take your car to the maintenance facility.

9 Q Ms. Herbst, I may use the term SAS
10 to refer to Sound Aircraft Services, Inc.; is
11 that okay?

12 A Understood.

13 Q That is how it was often referred
14 to; is that fair to say?

15 A Yes.

16 Q You just described what SAS did
17 when it was set up in 1990. Did there come a
18 time when that changed, where SAS began doing
19 other things or stopped doing certain things?

20 A Yes.

21 Q When was that?

22 A That was in about 1992. We leased
23 some more ramp space and began renting tie-down
24 space -- parking spaces to aircraft. In 1992 we
25 also began selling aviation fuel at the airport

1 C. Herbst

2 for piston aircraft and jet fuel for turbine and
3 jet aircraft.

4 Q How long did that continue for?

5 A Well, to present; tie-downs and
6 fuel sales are still ongoing. Aircraft
7 maintenance closed in 2004.

8 Q What about SAFE, what did SAFE do
9 when it was formed in 1992?

10 A In 1992 SAFE primarily did
11 aircraft flight instruction, pilot training,
12 aerial sightseeing.

13 Q Did there come a time when that
14 changed or expanded?

15 A Yes, in 1998 we became a Part 135
16 FAA certified charter operator.

17 Q Did there come a time around 1994
18 when SAFE began providing booking services?

19 A It was earlier than that. It was
20 actually Sound Aircraft Services primarily, and
21 it was I want to say in late '92 that I started
22 working with Action Airlines on brokering
23 charters. And in 1993 I was brokering also with
24 Action Airlines and I believe we did some work
25 for Shoreline Aviation in '93, a very little

1 C. Herbst

2 bit.

3 Q How would you describe the work
4 that you were doing with Action Air beginning in
5 '92?

6 A I was booking charters for them.
7 Private aircraft charters. You know, a client
8 would call me ask to go from point A to point B
9 and I would hire Action Airlines to operate that
10 flight or perform that flight.

11 Q When you started working with
12 Shoreline in 1993, what were you doing with
13 them?

14 A Shoreline was providing lifts for
15 the LaGuardia runs that we were doing with
16 Action Airlines. It was flights between East
17 Hampton and LaGuardia.

18 Q In the 1992-1993 time frame were
19 you doing most of that work for SAFE?

20 A Yes, it was just me.

21 Q Did SAFE have a separate bank
22 account from SAS?

23 A It did.

24 Q Did you take steps to ensure, for
25 example, that money that was due to SAS went

1 C. Herbst

2 into the SAS bank account as opposed to the SAFE
3 bank account?

4 A SAS was paid directly, yes.

5 Q You kept a separate bank account
6 for SAS and SAFE?

7 A Yes.

8 Q If money was due to SAS, it went
9 into the SAS bank account not the SAFE bank
10 account?

11 A That's correct.

12 Q And the reverse is true, monies
13 due to SAFE went into the SAFE bank account?

14 A Yes.

15 Q SAFE expenses were paid from the
16 SAFE account?

17 A Yes.

18 Q And SAS expenses were paid from
19 the SAS account?

20 A Yes.

21 Q You never used those accounts
22 interchangeably?

23 A I'm not sure I would understand
24 how I would do that.

25 Q Did you ever use the SAFE checking

1 C. Herbst

2 account to pay for an SAS expense?

3 A No.

4 Q Did you ever use the SAS account
5 to pay --

6 A I'm sorry. No, I do not believe I
7 have ever done that.

8 Q Did you ever use a personal
9 account to pay a SAFE or SAS expense?

10 A No.

11 Q Did you ever take any funds that
12 were due to SAS or SAFE and deposit them into a
13 personal account?

14 A I'm sorry, did you say did I ever
15 take corporate funds from SAFE and SAS and
16 deposit funds due to the corporation and deposit
17 them into my personal account?

18 Q Yes, that's what I'm asking.

19 A I never did that.

20 Q If I use the term respecting
21 corporate formalities to describe what we just
22 discussed with regard to separate bank accounts,
23 would that term now make sense to you?

24 A Yes.

25 Q Is it fair to say in 1992 and 1993

1 C. Herbst

2 you respected corporate formalities with regard
3 to SAFE and SAS?

4 A Yes.

5 Q And did you continue to do that
6 for the entire time you were involved with SAS?

7 A Yes.

8 Q And did you continue to also
9 respect corporate formalities with regard to
10 SAFE?

11 A Yes.

12 Q Did you ever say you used those
13 corporate entities interchangeably?

14 A I don't know that I understand
15 exactly what you mean by that.

16 Q Do you understand what
17 interchangeably means?

18 A When you are referring to it as
19 interchangeably with the corporations, I'm not
20 sure I do.

21 Q You understood what it meant to
22 not respect corporate formalities, correct?

23 A If you are telling me that
24 corporate formalities are a corporation is
25 responsible for their particular expenses and

1 C. Herbst

2 those expenses are paid for by that corporate
3 entity, then --

4 Q Okay.

5 A -- I get that. Those expenses --
6 and that's how it was. If I had a payment due
7 from Flight Enterprises for whatever that
8 expense was, it came from Flight Enterprises, it
9 did not come from Sound Aircraft.

10 Q If it did come from Sound
11 Aircraft, for example, that would have been
12 using entities interchangeably; does that make
13 sense to you?

14 MR. KRIEGSMAN: We don't
15 hear you, Reid.

16 MR. SKIBELL: We will
17 change computers and log in to see
18 if that helps you.

19 (Recess was taken)

20 MR. SKIBELL: I'm going to
21 object to that. It calls for
22 speculation and a legal
23 conclusion.

24 MR. KRIEGSMAN: Thank you.

25 Q Ms. Herbst, you identified three

1 C. Herbst

2 entities; SAS, SAFE, and SAS Auto Group. Was
3 there ever a fourth Sound entity?

4 A No.

5 Q Your testimony is that as long as
6 you were involved with those entities you
7 respected corporate formalities?

8 A Yes.

9 Q Are you familiar with Shoreline
10 Aviation, the plaintiff in this case?

11 A I am.

12 Q How did you come to meet Shoreline
13 Aviation?

14 A I met John Kelly I believe like in
15 I'm going to say 1993. It's almost 40 years now
16 so it's hard to say a specific date. I met him
17 very informally in the terminal building. I
18 believe I was introduced to him by the airport
19 manager at the time.

20 John Kelly had just come in on a
21 flight on a seaplane, a Caravan, the bigger
22 seaplanes. And I met him I asked him if he
23 wanted to work with Action with regard to
24 LaGuardia we were doing. He knew the owner of
25 Action, they were very friendly.

1 C. Herbst

2 I also asked if he would be
3 interested in using his seaplanes for a similar
4 run where I would book the passengers and he
5 would provide the aircraft. For my LaGuardia
6 clients I could offer a seaplane run, and he
7 seemed affirmative that that would be something
8 that we could explore.

9 Q At the time that you met him,
10 which sounds like to the best of your memory was
11 1993, do you know if he was already in the
12 seaplane business?

13 A Yes. As far as I knew he was in
14 the seaplane business, yes.

15 Q Was that Shoreline operating
16 flights between Manhattan and the Hamptons?

17 A I don't know what the extent they
18 operated at that time. I knew he had the
19 particular aircraft he was in was owned by Harry
20 Maclow so I knew he did private services for
21 different clients of his own.

22 Q So there came a time when you
23 worked with Shoreline on seaplane commuter
24 flights between Manhattan and East Hampton; is
25 that correct?

1 C. Herbst

2 A Yes. I worked with him on private
3 charters, too. We did a lot of private charter
4 work. He had smaller seaplanes as well. We
5 brokered for a lot of smaller trips on smaller
6 aircraft. There was only one large aircraft at
7 the time. I don't recall what the availability
8 was on that at the time, but that's how we
9 started out. We did use smaller airplanes too,
10 for 23rd Street runs as shared charters, not
11 private charters.

12 Q To your knowledge, he was
13 operating some of those seaplane flights when
14 you began working with him?

15 A Yes, to my knowledge he was. Yes.

16 Q Would some of those have included
17 flights between Manhattan and East Hampton?

18 A I would be assuming so. Honestly,
19 that would be my guess. He chartered airplanes
20 that could be coming and going from anywhere.

21 Q I don't want you to assume.

22 MR. KRIEGSMAN: Reid, I'm
23 going to show her the Amended
24 Complaint next.

25 Q I'm going to show you a document

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C. Herbst

the Amended Complaint in this case. It's
Defendant's Exhibit A for today's deposition.

(Defendant's Exhibit A,
Amended Complaint, was marked for
identification.)

Q I'm going to ask you a question
about a specific part of the document but your
attorney has the whole document. With the Zoom
format you can only see what I have up on the
screen. I will make sure your attorney has the
whole document. If at any time you want to see
another page, just indicate that.

MR. SKIBELL: I don't
believe you mailed us an exhibit.
If you want to do what you are
saying you want to do, you need to
e-mail me the exhibits.

MR. KRIEGSMAN: I am going
to do that. I told you before I
want to show her this and one or
two documents that you introduced,
and then I'm going to send you
everything in order. I will make
sure that any document I'm asking

1 C. Herbst

2 her about you have up on the

3 screen.

4 Q Are you generally familiar with
5 the Amended Complaint in this case, Ms. Herbst?

6 A I am, yes.

7 Q I'm going to turn to Paragraph 17
8 of the Amended Complaint. "In 1994, Shoreline
9 Aviation entered into an oral agreement with SAS
10 and Herbst (the contract) pursuant to which
11 Herbst would provide booking services
12 exclusively for Shoreline Aviation's flights to
13 and from the East Hampton Airport in return for
14 commissions." Did I read that correctly?

15 A You did.

16 Q Is that a true statement?

17 A I wasn't working with them
18 exclusively.

19 Q The question is, is Paragraph 17 a
20 true statement?

21 A Yes, generally true.

22 Q You began working with them in
23 1994?

24 A I believe I did some work for them
25 in 1993 as well.

1 C. Herbst

2 Q You booked their flights, correct?

3 A I booked my clients on their
4 aircraft, correct.

5 Q You provided booking services to
6 Shoreline; is that fair to say?

7 A Yes. I was the charter broker and
8 the shared charter broker, so yes.

9 Q And in exchange you were paid a
10 commission?

11 A Yes.

12 Q The agreed upon commission was 10
13 percent?

14 A Correct.

15 Q You worked pretty hard?

16 A I worked very hard.

17 Q I have read a lot of documents in
18 this case and it looks to me like you were
19 working very hard. You didn't just work hard,
20 you also incurred expenses to provide the
21 booking services, correct?

22 A Yes, correct.

23 Q You had overhead?

24 A Yes.

25 Q You had a staff?

1 C. Herbst

2 A Yes.

3 Q At least some of the intention of
4 that staff was to provide these booking
5 services?

6 A Yes.

7 Q You weren't doing these things for
8 free, correct?

9 A I wasn't doing them for free.

10 Q You expected to be paid?

11 A I expected to be paid and I also
12 paid. I paid operators and operators paid me,
13 the business arrangement.

14 Q What is meant by that is sometimes
15 the payments from the customers would go to
16 Shoreline and they would cut you a check, and
17 sometimes the payments went to you and you would
18 cut Shoreline a check, correct?

19 A Yes, that's correct depending on
20 what the sale was.

21 Q The agreement was you provided the
22 booking services in exchange for a 10 percent
23 commission, correct?

24 MR. SKIBELL: Objection.

25 You can answer.

1 C. Herbst

2 A My commission was 10 percent of
3 the trip, the fare, the charter. It was 10
4 percent.

5 Q You agreed that that was the
6 correct number? You didn't think it was
7 supposed to be 12 or 8 percent?

8 MR. SKIBELL: Objection.
9 Are you talking to a particular
10 time? It's vague.

11 MR. KRIEGSMAN: Just for
12 the record, buddy, let her answer.

13 MR. SKIBELL: I'm letting
14 her answer. I'm trying to make
15 sure it is clear in terms of time
16 frame. I want the record to be
17 clear.

18 MR. KRIEGSMAN: I don't
19 need you to ask me any questions.
20 If you have an objection, please
21 state it succinctly pursuant to
22 the federal rules of civil
23 procedure.

24 Q Do you need me to read that
25 question again?

1 C. Herbst

2 A Please.

3 Q Did you agree that 10 percent was
4 the correct commission?

5 MR. SKIBELL: Objection.

6 Q Don't look at your attorney, I'm
7 asking you.

8 MR. SKIBELL: You are
9 allowed to answer if you
10 understand. If you want
11 clarification, you are allowed to
12 ask for clarification.

13 A Can you clarify, please?

14 Q You were paid a 10 percent
15 commission in exchange for the booking services
16 that you provided; is that true?

17 A Are you in a particular year?

18 Q How about 1994; is it true?

19 A 1994, yes.

20 Q Was it true in 1995?

21 A Yes. To the best of my knowledge,
22 yes. This was a long time and -- yes, to the
23 best of my knowledge 10 percent.

24 Q You testified that you were here
25 on behalf of SAFE, correct?

1 C. Herbst

2 A I'm here on behalf of SAFE, yes.

3 Q In a capacity and you got a notice
4 that you are the most knowledgeable person about
5 these topics, correct?

6 A That's correct.

7 Q You are prepared to testify on
8 behalf of SAFE on those identified topics,
9 correct?

10 A Yes.

11 Q That 10 percent continued through
12 at least 2017; isn't that true?

13 A I can't say that for sure. Things
14 changed and fares increased and the way things
15 were done, you know, there could have been -- it
16 could have been more than 10 percent but
17 generally speaking yes, 10 percent was the magic
18 number.

19 Q That was pursuant to a contract
20 between you and John Kelly, correct?

21 MR. SKIBELL: Objection.

22 A We did not have a contract. We
23 had an arrangement. We had a business
24 arrangement.

25 MR. SKIBELL: Give me a

1 C. Herbst

2 A No, I'm not working with Shoreline
3 now.

4 Q There came a time when what you
5 described as your arrangement with Shoreline
6 came to an end, correct?

7 A Yes.

8 Q How did it end?

9 A How it ended was John Kelly after
10 discussions and many different conversations
11 that were had sent out an e-mail to clients
12 basically terminating me, letting the clients
13 know he would no longer be working with me.

14 Q John Kelly terminated the
15 arrangement?

16 A Yes. He sent out an e-mail on
17 May 6 informing clients that he was -- they were
18 no longer going to use me for bookings.

19 Q That is May 6, 2018?

20 A Yes, May 6, 2018.

21 MR. KRIEGSMAN: Next I'm
22 going to show her what you marked
23 yesterday as Exhibit 4, Reid.

24 Q Are you able to see that
25 Ms. Herbst?

1 C. Herbst

2 A Yes.

3 MR. SKIBELL: If you want
4 to look at the rest of the
5 document, you certainly can.

6 Q In the top right there is a
7 handwritten note that says "sent 5/6/18"; am I
8 reading that correctly?

9 A Yes.

10 Q Do you recognize this document?

11 A Yes.

12 Q Is this what you were just
13 referring to when you said that Mr. Kelly
14 terminated the relationship on May 6, 2018?

15 A There's another document in this
16 case somewhere that he says he would no longer
17 be using my services.

18 Q Let's take a look at this document
19 first. On the top right there is a handwritten
20 note that says 5/6/2018.

21 A Yes.

22 Q This is coming from Shoreline
23 Aviation's Seaplane Services. Did I read that
24 correctly?

25 A Yes.

1 C. Herbst

2 Q "Dear Shoreline Aviation customer"
3 -- bearing Bates stamp beginning with SAI 47 --
4 "beginning May 1, 2018, our seaplane commuter
5 and charter customers will be able to book
6 directly with Shoreline Aviation using our
7 Website, e-mail, or toll free 800 number." Did
8 I read that correctly?

9 A You did.

10 Q I'm going to show you Exhibit 6.
11 This is also Exhibit O to the Amended Complaint.
12 Are you able to see the screen, Ms. Herbst?

13 A Yes.

14 Q This appears to be an e-mail, if
15 we look at the top, from you dated May 7, 2018.

16 A Yes.

17 Q At 7:05 p.m. Did I read that
18 correctly?

19 A You did.

20 Q "To reservations department.
21 Subject: Message to our valued clients. As you
22 know, you purchased a ticket book for summer
23 2018." Did I read that correctly?

24 A You did.

25 Q "Unfortunately, it appears that

1 C. Herbst

2 Shoreline Aviation no longer wishes to work with
3 Sound Aircraft Flight Enterprises without notice
4 to us." Did I read that correctly?

5 A Yes.

6 Q "Many of you have been our
7 longstanding customers for more than 20 years.
8 We truly appreciate and value the relationship
9 we have built together and we would like to
10 continue this relationship regardless of
11 Shoreline's unexpected decision." Did I read
12 that correctly?

13 A Yes.

14 Q Just to go to the background,
15 let's talk about some of the background. Let's
16 go back to the background of your relationship
17 with Shoreline and the arrangement. Part of
18 that arrangement involves seaplane commuter
19 flights, correct?

20 A Yes.

21 Q And these were regularly scheduled
22 flights during the summer months between
23 Manhattan and East Hampton, correct?

24 A That's correct.

25 Q You were booking passengers on

1 C. Herbst

2 Shoreline flights and you were being paid a
3 10 percent commission, correct?

4 A Correct.

5 Q You testified that that was an
6 arrangement between you and Shoreline, correct?

7 A That's correct.

8 Q You testified that John Kelly
9 terminated that arrangement, correct?

10 A Correct.

11 Q So looking at this May 7, 2018,
12 e-mail, Exhibit O to the Amended Complaint, you
13 sent this after you believed Mr. Kelly
14 terminated the relationship?

15 A Yes.

16 Q You are saying he did that without
17 notice to you?

18 A Yes, I'm saying that e-mail went
19 out from John Kelly to clients without my
20 knowledge.

21 Q You go on to say that Shoreline's
22 decision was unexpected.

23 A Yes.

24 Q Those are true statements?

25 A I believe them to be true

1 C. Herbst

2 statements, yes.

3 Q Mr. Kelly terminated the
4 relationship without notice to you?

5 A That's correct.

6 Q When he did, it was unexpected?

7 A Correct.

8 Q And he did it on May 6, 2018?

9 A Yes.

10 MR. SKIBELL: Can we take a
11 break. Also maybe we can fix the
12 technology.

13 MR. KRIEGSMAN: Okay, in a
14 few more minutes.

15 Q Before he terminated it, the
16 arrangement was in place?

17 A Yes.

18 MR. KRIEGSMAN: This is
19 what you sent us last night, the
20 interrogatory responses. We are
21 going to call this Plaintiff's
22 Exhibit D-2, defendant's and Sound
23 Aircraft Flight Enterprises
24 Amended Responses and Objections
25 to Plaintiff's First Set of

1 C. Herbst

2 Interrogatories.

3 (Plaintiff's Exhibit D-2,
4 Defendant's Amended Responses and
5 Objections to Plaintiff's First
6 Set of Interrogatories, was marked
7 for identification.)

8 Q Are you able to see that on the
9 screen?

10 A Yes.

11 Q Are you familiar with this
12 document, Ms. Herbst?

13 A I am.

14 Q That is your signature on the
15 verification page executed March 28, 2022?

16 A Yes.

17 Q On Page 4 I'm going to read to you
18 Interrogatory Number 3. "Describe in detail
19 your duties and obligations in providing booking
20 services for Shoreline Aviation and how you
21 performed those duties and obligations." Did I
22 read that correctly?

23 A You did.

24 Q And then it says the response, and
25 do you see in the first sentence there are some

1 C. Herbst

2 Q Fair to say the seaplane commuter
3 flights were regularly scheduled trips during
4 the summer months between Manhattan and East
5 Hampton?

6 A Yes.

7 Q Where you could purchase a seat on
8 one of those regularly scheduled Shoreline
9 flights?

10 A They were shared charter flights.
11 They were operated by Shoreline.

12 Q There was a regular schedule?

13 A Yes.

14 Q And so if you wanted to go from
15 Manhattan to East Hampton on a seaplane commuter
16 flight, you would have to go on one of the
17 regularly scheduled flights?

18 A Yes, you would choose what time
19 you would like to depart.

20 Q As opposed to a charter flight
21 where you could go when you wanted as a
22 passenger and where you wanted?

23 A Correct.

24 Q You booked passengers on Shoreline
25 seaplane commuter flights?

1 C. Herbst

2 A I booked passengers on those
3 shared charter flights, yes. I sold seats, yes.

4 Q When you say shared charter
5 flights, is that the same thing as a seaplane
6 commuter flight?

7 A Yes.

8 Q If I use the term "seaplane
9 commuter flight," do you understand what I'm
10 talking about?

11 A Yes.

12 Q And you booked passengers on
13 seaplane commuter flights?

14 A I did.

15 Q Shoreline commuter flights?

16 A Those commuter flights were
17 operated by Shoreline Aviation. It was
18 Shoreline Aviation aircraft on those flights,
19 yes.

20 Q You booked passengers on those
21 flights for more than 20 years?

22 A Yes.

23 Q And you were paid 10 percent
24 commission for that work?

25 A Yes.

1 C. Herbst

2 Q You also booked passengers on
3 Shoreline charter flights, correct?

4 A Correct.

5 Q You were paid commission for that
6 work as well?

7 A Correct.

8 Q The coupon book mailer was where
9 passengers who were going to fly on the seaplane
10 commuter flights had the option of purchasing
11 books of tickets in advance for which they would
12 get a discount on the fare; is that correct?

13 A That's correct.

14 Q And they would purchase the coupon
15 book typically beginning in the fall of the
16 prior year and they would use them the following
17 summer?

18 A We did not typically sell them in
19 the fall. It was only in the later years that
20 we started to send out those offers in the fall.

21 Q When you say the later years, when
22 was that?

23 A I would say May 2010, 2011, 2012
24 to 2017.

25 Q Beginning in 2010, 2011 or 2012

1 C. Herbst

2 there were coupon book mailers that would go out
3 to these customers giving them an opportunity to
4 purchase coupon books, correct?

5 A Yes. The mailer went out to my
6 clients that would give them an opportunity to
7 prepurchase flights for the following season.

8 Q A mailer would go out again in
9 March or April, correct?

10 A Yes. There were no set dates, no
11 specific date when it would go out but yes, in
12 the spring we would send it out. March or
13 April, yes.

14 Q Springtime, approximately March or
15 April; is that fair to say?

16 A That's fair, yes.

17 Q The flights were only operating in
18 the summer months, correct?

19 A Correct.

20 Q If you purchased a coupon book,
21 you would have to get a reservation on one of
22 the regularly scheduled commuter flight?

23 A The purchase of the coupon book
24 wasn't in conjunction with the reservation.
25 When you made your reservation or you wanted to

1 C. Herbst

2 fly, that would be your form of payment. We
3 would deduct it from your commuter pass.

4 Q Right; or you could just purchase
5 a seat, correct?

6 A Or you could purchase a seat.
7 That would be at retail price.

8 Q And so if they purchased the
9 coupon book, they would purchase that from
10 Shoreline and give Shoreline the money for the
11 coupon book, and then Shoreline would turn
12 around and give you the 10 percent commission,
13 correct?

14 MR. SKIBELL: Objection;
15 vague as to time period.

16 A When they purchased the coupon
17 book, they purchased it through us, through our
18 mailing, in response to our mailing. We would
19 collect the payment for it, and that would only
20 be in a check form.

21 John Kelly did not want to take
22 credit cards for coupon books because the credit
23 cards take three percent of the sale and it was
24 already a discounted fare. We would send out
25 the mailers to see if anybody was interested and

1 C. Herbst

2 people would respond to us. They would send the
3 checks to us. We would do all of the paperwork
4 on that and submit to Shoreline those payments.

5 Q Coupon books weren't purchased
6 directly from Shoreline?

7 MR. SKIBELL: Objection;
8 asked and answered.

9 A No.

10 Q When they purchased seats without
11 a coupon, they purchased directly from SAFE?

12 A Again, there has to be a time
13 period. It was Sound Aircraft Services for most
14 of the time. It was only 2017 that it was SAFE
15 so, yes. They were either purchasing it from
16 Sound Aircraft Services or Sound Aircraft Flight
17 Enterprises.

18 Q Give me the time frame when it was
19 Sound and when it was SAFE.

20 A It was sound from the beginning,
21 since '93 or '94 until 2016, the end of 2016.
22 Then in 2017 began SAFE.

23 Q But SAFE already existed going
24 back to '94?

25 A '92, yes.

1 C. Herbst

2 Q Why did that change? Was that
3 part of your divorce agreement with Mr. Tuma?

4 A That's correct.

5 Q Just going back to the seaplane
6 commuter flights, they operated during the
7 summer, correct?

8 A Correct.

9 Q There was a schedule?

10 A Correct.

11 Q If you wanted to travel on one of
12 the flights, you needed a ticket and a
13 reservation, correct?

14 A That's correct.

15 Q They bought seats from you, the
16 passengers?

17 A Yes.

18 Q What was the guaranteed seating
19 form?

20 A The guaranteed seating form was
21 developed over the years. It is basically the
22 rules if you will, of what was required to
23 identify or what the restrictions were, what the
24 cancellation policy was, what the luggage
25 restrictions were. And then it would include

1 C. Herbst

2 book mailer as well, correct?

3 A Yes.

4 Q Every year --

5 A Yes.

6 Q -- until the arrangement was
7 terminated?

8 A Yes.

9 Q Did you do any advertising?

10 A I did.

11 Q Did you advertise for commuter
12 seaplane commuter flights?

13 A I did.

14 Q Did you advertise for Shoreline
15 charter flights?

16 A I advertised for -- I honestly
17 don't remember what the advertisement was. It
18 was for seaplanes, helicopters, land planes, jet
19 aircraft. The advertisement included all.

20 Q Did the advertisement mention
21 Shoreline by name?

22 A I don't recall.

23 Q What was the form of the
24 advertising that you did?

25 A My advertising was mostly or

1 C. Herbst

2 mainly Yellow Book and Peconic Book, the phone
3 books when they were popular. They would be
4 free and they would end up on everybody's
5 doorstep. The renters that came out had all of
6 that.

7 I also did some -- I may have done
8 some advertisement in the East Hampton Star.
9 That would be early on. There was a point in
10 time when the phone books were no longer popular
11 anymore and people were doing more online. We
12 were sold out anyway, so advertisements was
13 really added onto the waitlist and nothing more
14 because we were at capacity.

15 Q Did you do any online advertising?

16 A No. Just Website, that's all.

17 Q You mentioned the phone book; did
18 the advertisements in the phone book mention
19 Shoreline by name?

20 A I don't recall if they mentioned
21 Shoreline Aviation by name.

22 Q What about the advertisements in
23 the East Hampton Star, did they mention
24 Shoreline by name?

25 A Again, I cannot tell you. I do

1 C. Herbst

2 not recall.

3 Q What about the advertisements on
4 your Website, did those mention Shoreline by
5 name?

6 A I don't believe it mentioned
7 Shoreline Aviation by name. I believe it
8 mentioned seaplane service. I'm sorry, I don't
9 recall.

10 Q I don't want to press your memory
11 but you are here as a witness on behalf of SAFE,
12 correct?

13 A I'm a witness on behalf of SAFE
14 but don't forget, it is 20 plus years of this
15 with Sound Aircraft Services. I acted as an
16 employee of Sound Aircraft Services up until the
17 transition to SAFE.

18 Q You testified earlier that you
19 were prepared to testify about the items
20 identified in that notice, correct?

21 A Yes.

22 Q Are you having any general trouble
23 with your memory today?

24 MR. SKIBELL: No, she is
25 not, Alex.

1 C. Herbst

2 MR. KRIEGSMAN: Reid, don't
3 answer for the witness today.

4 A I don't believe I'm having -- I
5 mean you are talking about really a long, long
6 time ago. It is very difficult to remember
7 everything.

8 Q Did you prepare for today's
9 deposition?

10 A Yes.

11 Q And you reviewed documents?

12 A I prepared to the best of my
13 ability.

14 Q You reviewed the Complaint in this
15 action?

16 A I did.

17 Q You reviewed the Answer that you
18 filed?

19 A My Answer with regard to
20 advertising or in general?

21 Q You looked at the Answer before
22 you testified; you knew that that was filed on
23 your behalf?

24 A Yes.

25 Q Did you review that to prepare for

1 C. Herbst

2 SAFE for seaplane commuter flights between
3 Manhattan and East Hampton between 1994 and 2018
4 flew with Shoreline, correct?

5 A Seaplanes, yes. They were the
6 only operator I used for those flights.

7 Q You didn't have your own planes?

8 A I had my own planes but not
9 seaplanes. May I also point out that in the
10 early days Shoreline --

11 Q All right, go ahead.

12 A I just want to point out that in
13 the early days they were the only ones that had
14 seaplanes. They were the only seaplane
15 operator, but they also had land planes that I
16 booked. They didn't only have seaplanes.

17 MR. SKIBELL: Can we just
18 take a few minutes for a bathroom
19 break?

20 MR. KRIEGSMAN: Sure, you
21 know, the longer we go today the
22 less chance we will finish today.

23 MR. SKIBELL: Five minutes
24 shouldn't matter. Maybe we can
25 get to the docs.

1 C. Herbst

2 MR. KRIEGSMAN: When we
3 finish the questions, we will get
4 to the docs. We will be back on
5 in five.

6 (Recess was taken)

7 MR. KRIEGSMAN: Back on the
8 record?

9 Q Ms. Herbst, I'm going to ask you
10 some questions about your divorce agreement with
11 Mr. Tuma and how that impacted this case. I
12 believe you testified earlier that your divorce
13 was finalized in 2017; is that correct?

14 A That is correct.

15 Q Did the divorce agreement provide
16 what was to happen with regard to those three
17 entities; Sound, SAFE, and the auto group
18 entity?

19 A What would happen to them?

20 Q Yes.

21 A I will state it the best that I
22 can. Sound Aircraft Services was going to
23 remain with Steven Tuma. I would have -- I
24 would not be able to compete with him with
25 regards to fueling aircraft, tying down aircraft

1 C. Herbst

2 or hangar storage or anything related to those
3 services. He would not be able to do any
4 aircraft charters, any aircraft flight
5 instruction or sightseeing or car rentals with
6 the exception of Enterprise car rental which he
7 already had a lease arrangement with the FBO.

8 Q What about booking services?

9 A Yes, that is aircraft charters.
10 He was not able to do aircraft -- book a
11 charter, he couldn't facilitate a charter. He
12 couldn't operate a flight school, pilot flight
13 instruction, aerial sightseeing, car rental with
14 the exception of Enterprise or the list related
15 to those services.

16 Q You testified earlier that these
17 three entities existed going back to the 1990s,
18 correct?

19 A Two did; Sound Aircraft Services
20 in 1990, Sound Aircraft Flight Enterprises in
21 1992. And SAS Auto Group I believe was 2016,
22 possibly 2015 but I believe it was 2016.

23 Q After the divorce SAFE became your
24 entity, not Mr. Tuma's?

25 A It was always just my entity.

1 C. Herbst

2 Q I apologize. I thought you
3 testified earlier that when it was started, it
4 was owned a hundred percent by Mr. Tuma.

5 A Sound Aircraft Services one
6 hundred percent Mr. Tuma, the corporation in
7 inception. Sound Aircraft Flight Enterprises
8 one hundred percent Cynthia Herbst from 1992
9 inception. SAS Auto Group was one hundred
10 percent Cynthia Herbst from inception.

11 Q This 2017 divorce agreement being
12 finalized, how did that impact your arrangement
13 with Shoreline?

14 A Well, the impact was more of an
15 employee situation. I had to find and train new
16 employees. The impact also was -- I didn't know
17 it at the time -- would be that the FBO was
18 going to now charge Shoreline Aviation for ramp
19 fees. And once again, I didn't know it at the
20 time that John Kelly would want to reclaim those
21 from me.

22 Q Anything else?

23 A That's it. The large part was the
24 employees, I had to hire and train new
25 employees.

1 C. Herbst

2 Q What about Maureen Quigley, she
3 was already an employee of yours?

4 A She was an employee of Sound
5 Aircraft Services, she became an employee of
6 Sound Aircraft Flight Enterprises.

7 Q So as far as the arrangement with
8 Shoreline and the services, the booking services
9 that SAFE provided, Maureen had already been
10 doing those things prior to 2017, correct?

11 A Correct. So it was Sound Aircraft
12 Services, correct.

13 Q She continued to do the same thing
14 but more under the SAFE umbrella?

15 A She was now under the SAFE
16 umbrella and the SAFE payroll.

17 Q After the divorce was finalized,
18 was anything communicated by SAFE or SAS to
19 Shoreline?

20 A I can't speak for SAS because I
21 don't know what my ex-husband would have
22 communicated. Prior to my divorce being settled
23 I had more than one conversation with John Kelly
24 with regards to there was a divorce and how that
25 looked like it was going to play out with regard

1 C. Herbst

2 to bookings and what would happen, you know,
3 employees and that sort of thing.

4 Q What did you tell Mr. Kelly? Did
5 you tell him you would continue to provide the
6 same services?

7 MR. SKIBELL: Objection to
8 form.

9 A Yes. We would continue to provide
10 the booking services, and Maureen was going to
11 come over to Flight Enterprises; she was on the
12 Flight Enterprises payroll. We would change
13 counters, a few little details that I went over
14 with him.

15 I also made it clear to him that
16 the FBO would not be able to perform charter
17 services or anything that would compete with
18 charter services with Flight Enterprises. That
19 was strictly spelled out in the divorce
20 agreement, and I let him know that before it was
21 finalized and then when it was finalized, that
22 that was the case.

23 Q As far as the arrangement between
24 you and Shoreline, you made clear to Kelly that
25 you would continue to provide the same booking

1 C. Herbst

2 services and you were going to continue to
3 receive that same 10 percent commission,
4 correct?

5 A Correct. Yes, he made it very
6 clear that he had no interest in doing his own
7 reservations.

8 Q Anything else that was discussed
9 with Mr. Kelly at that time?

10 A I believe that covers it.

11 Q Any other conversations or
12 communications that you had with Mr. Kelly in
13 connection with the finalization of your divorce
14 agreement and the Sound/SAFE split or how that
15 might impact Shoreline or your arrangement with
16 Shoreline?

17 A I think that covers it.

18 Q We talked before about Blade.

19 A Yes.

20 Q Did there come a time when you
21 began discussions with Blade about doing
22 business with them?

23 A Yes.

24 Q When was that?

25 A Early 2018.

1 C. Herbst

2 Q What was the nature of those
3 discussions?

4 A They were interested in if there
5 was any possibility that we could work together.
6 And I thought that, you know, at the time
7 perhaps yes, that might be a great idea for us
8 to all be able to work together. That would
9 include John Kelly, so I asked that John Kelly
10 be part of the conversation of how we might be
11 able to come up with an agreement that we all
12 work together.

13 Q You were saying something else?

14 A I said an agreement that would
15 benefit everyone.

16 Q Who made the first contact with
17 Blade? Did they reach out to you or did you
18 reach out to them?

19 A They reached out to me.

20 Q Who was that?

21 A I want to say it was Rob
22 Wiesenthal.

23 Q Did he reach out to you by phone
24 or e-mail, talk to you in person?

25 A He was in the East Hampton

1 C. Herbst

2 terminal a lot so I believe our first
3 conversation was in the terminal.

4 Q That would have been early 2018?

5 A Early 2018 in person.

6 Q January?

7 A Or February. I don't recall the
8 specific date.

9 Q What did he say?

10 A It would be really great if we
11 could join forces.

12 Q When you say "we," who is the we
13 there?

14 A Well, for me the "we" was me,
15 Shoreline, SAFE -- me as SAFE, Shoreline as the
16 lift, and Blade.

17 Q In that first discussion when
18 Mr. Wiesenthal approached you, did he bring up
19 Shoreline?

20 A I think I brought up Shoreline.

21 Q What did you say?

22 A That I wanted John Kelly to be
23 part of the conversation.

24 Q What was Mr. Wiesenthal's
25 response?

1 C. Herbst

2 A He had no problem with it.

3 Q For the record, who is Ryan Pilla?

4 A Ryan Pilla is my boyfriend.

5 Q Did he have a role at SAFE?

6 A No.

7 Q Never worked there?

8 A No.

9 Q As far as your arrangement with
10 Shoreline Aviation, was he involved in that at
11 all?

12 A No.

13 Q Was he involved in the discussions
14 with Blade?

15 A Yes.

16 Q At what point did he become
17 involved?

18 A He was involved in discussions
19 with regard to me. He was my boyfriend and I,
20 you know, wanted his advice, his opinion. He
21 was and he is a businessman, operates many
22 businesses, and the conversation really started
23 with me.

24 Q Meaning between you and Mr. Pilla?

25 A Yes.

1 C. Herbst

2 Q Did there come a time when
3 Mr. Pilla was communicating directly with Blade?

4 A I don't believe without me. It
5 was always sort of I'm communicating with him
6 and he was communicating with me and Blade. He
7 could have had conversations without me I
8 presume, but I was aware of everything so
9 nothing behind closed doors.

10 Q I'm not asking about with you or
11 without you. I'm just asking did there come a
12 time when Mr. Pilla was communicating directly
13 with Blade?

14 A I believe there was a time, yes.

15 Q When was that?

16 A Probably during discussions on
17 different options or, you know, different
18 scenarios that would come into play.

19 Q Was that also in January or
20 February?

21 A Probably more end of February,
22 March.

23 Q You have the first conversation
24 with Mr. Wiesenthal in the East Hampton Airport
25 and you brought up Shoreline and John Kelly.

1 C. Herbst

2 What was Mr. Wiesenthal's reaction?

3 A I don't think he had a reaction
4 because Shoreline had seaplanes. They had a lot
5 of lifts; it would benefit Blade to be working
6 with Shoreline and with SAFE for the client, for
7 the passenger portion of it. I brought the
8 passenger portion of it, Shoreline would bring
9 the lift, and Blade had the app.

10 Q That is your first conversation
11 with Mr. Wiesenthal in the airport. What
12 happened next?

13 A We tried and got a meeting
14 together with all of the operators or all the
15 players; me, Shoreline, and Blade, and we had
16 the meeting in April where the idea was
17 presented and went from there. Discussions went
18 from there. There were different scenarios, you
19 know.

20 Q Where did that meeting take place
21 in April?

22 A The Westhampton Airport.

23 Q Who was present for that meeting?

24 A Rob Wiesenthal, Melissa Tomkiel of
25 Blade, John Kelly and Eric Weaver of Shoreline,

1 C. Herbst

2 and me for SAFE and Ryan Pilla.

3 Q What was discussed at that
4 meeting?

5 A There were different scenarios
6 discussed; how Shoreline could provide the lifts
7 for Blade which would -- you know, Blade
8 wouldn't have to go out to other seaplane
9 operators for their lifts for their passengers.

10 John had a lot of aircrafts and
11 could provide a lot of lifts. Logistically it
12 would be easier for Blade to use one operator
13 than several different operators. That was part
14 of the conversation.

15 Part of the conversation was that
16 SAFE could provide the bookings through the
17 Blade app for her clients which would have
18 streamlined so much for me. Obviously, the
19 benefit for Blade would be they would have, you
20 know, both SAFE and Shoreline working together.
21 We would all be working as one. It just seemed
22 like such a logical thing to do instead of
23 competing with each other which is always
24 difficult.

25 Q Prior to that meeting had you been

1 C. Herbst

2 competing with Shoreline?

3 A No.

4 Q You first meet Mr. Wiesenenthal in
5 the East Hampton Airport in January or February;
6 he approaches you?

7 A Yes.

8 Q And then as far as the discussions
9 with Blade, the next thing that happened is the
10 April meeting at the Westhampton Airport,
11 correct?

12 A Yes.

13 Q Mr. Kelly was present at the April
14 meeting?

15 A Yes.

16 Q How did he know about it? Did you
17 tell him about it?

18 A I don't know if I told him about
19 it or Ryan told him about it or both.

20 Q Before that April meeting at
21 Westhampton Airport, as far as you know, any
22 direct communication between Shoreline and
23 Blade?

24 A I don't know of any. I'm not
25 aware of any.

1 C. Herbst

2 and I was traveling a lot during that time.

3 Q You told him over the phone that
4 you wanted to meet with he and Blade at the
5 Westhampton Airport to talk about working
6 together as a team?

7 A Yes.

8 Q You didn't provide any more detail
9 as to what you meant by that?

10 A No, I don't think detail was
11 necessary. Again, it was pretty obvious what
12 role we would play.

13 Q What was Mr. Kelly's response?

14 A He would. He would have the
15 meeting. He would attend.

16 Q Did he ask you any details about
17 what you had in mind or what Blade had in mind?

18 A No.

19 Q As far as you know, when Mr. Kelly
20 walked into the meeting with Blade at the
21 Westhampton Airport, all he knows is there's a
22 possibility of these three entities working
23 together as a team?

24 A Yes.

25 Q You are not aware of Mr. Kelly

1 C. Herbst

2 being provided any further details?

3 A I'm not aware.

4 Q You are not aware of him asking
5 for any further details?

6 A I'm not aware.

7 Q You said that meeting was April 6?

8 A Yes, the 6th.

9 Q What happened at the April 6
10 meeting?

11 A We all show up. Blade sort of,
12 you know, spells out what the they are looking
13 to do, how we can all work together; what my
14 role would be, what John's role would be, and
15 what their role would be.

16 They spoke specifically on what
17 they would pay Shoreline for the lift of the
18 aircraft, and my role would be, you know, using
19 their platform to book my clients. Their role
20 would be -- I'm sorry, I would get paid by
21 Blade, and Shoreline would get their payments
22 directly from Blade for their lifts.

23 Q Let's talk about who is there in
24 the April 6 meeting. You are there?

25 A Yes.

1 C. Herbst

2 Q Mr. Pilla is there with you?

3 A Yes.

4 Q John Kelly is there?

5 A Yes.

6 Q Eric Weaver is there?

7 A Yes.

8 Q Rob Wiesenthal?

9 A Yes.

10 Q Melissa Tomkiel?

11 A Yes.

12 Q Who is Melissa Tomkiel for the
13 record?

14 A I don't know her -- I think she is
15 the president of Blade now. I don't know what
16 her specific title was. If she was legal
17 counsel, I'm not sure what her title was.

18 Q But as of April of 2018 she worked
19 for Blade?

20 A Yes.

21 Q And she was at that meeting on
22 behalf of Blade?

23 A Yes.

24 Q Was anyone else there?

25 A I don't believe anybody else was

1 C. Herbst

2 Shoreline Aviation in 201?

3 A Absolutely not.

4 Q During the course of your
5 arrangement with Shoreline Aviation, did you
6 take any action to harm them?

7 A I did not, Mr. Kriegsman. I never
8 booked another seaplane operator in my duration
9 of working with Shoreline Aviation. Never once
10 did I do that. I was super loyal. I cannot say
11 that in reverse.

12 Q How about the \$65,000 in advance
13 commissions that you were paid --

14 A \$65,000 --

15 MR. SKIBELL: Let him ask
16 the question.

17 Q For the 2018 season was it fair
18 for you to keep those commissions?

19 A Absolutely, yes.

20 Q How many of those passengers did
21 you book on seaplane commuter flights?

22 A The commission was based on the
23 fact that I sold the tickets, not that I booked
24 them. Passengers buy coupon books year after
25 year. I didn't necessarily book them. They

1 C. Herbst

2 didn't have to book reservations. It was for
3 the sale of it.

4 Q The folks who bought the coupon
5 books, how many of them did you book on a
6 seaplane commuter flight in 2018?

7 A I never had the opportunity to
8 book them.

9 Q In your dealings with Blade in
10 2018, did you do anything that was dishonest
11 towards Shoreline?

12 A No.

13 Q What happened next after the April
14 6 meeting?

15 MR. SKIBELL: We have been
16 going for about an hour. Is now a
17 good time, Alex?

18 MR. KRIEGSMAN: Just answer
19 the pending question.

20 A After the April 6 meeting I had
21 offers from Shoreline to purchase, I had offers
22 from Blade to purchase. There were a lot of,
23 you know, scenarios. I had software program
24 that was really screwing me up with the delay of
25 that. Those are the things that were happening

1 C. Herbst

2 after the April 6 meeting.

3 MR. KRIEGSMAN: Let's take
4 a 15-minute break and we will come
5 back.

6 (Recess was taken)

7 MR. KRIEGSMAN: Back on the
8 record. Can you read back the
9 last question and answer.

10 (The requested portion of
11 the record was read by the Court
12 Reporter.)

13 Q What was the offer from Shoreline?

14 A I don't have it in front of me but
15 I believe it was \$375,000 over the course of
16 three years with my sales commissions that I got
17 from selling coupons as the down payment.

18 Q Anything else?

19 A I think it mentioned maybe
20 purchasing assets or not necessarily the
21 personal items, but my client list would be part
22 of the deal, the files pertaining to that.
23 Employees may or may not come over. Certain
24 things like that.

25 Q When was that presented?

1 C. Herbst

2 A If I had it in front of me,
3 April 13 maybe. April 13.

4 Q So approximately April 13 of
5 2018 --

6 A Yes.

7 Q -- John Kelly presents an offer to
8 you to purchase your business; is that correct?

9 A Correct.

10 Q How does he communicate that? Is
11 that through e-mail?

12 A Via e-mail.

13 Q What was your response?

14 A I was considering it, but it
15 really wasn't striking me as a fair offer
16 because my own money was the down payment.

17 Q John Kelly presents you this offer
18 on about April 13, 2018, and you were then
19 considering it. Did you tell Mr. Kelly that you
20 were considering it?

21 A I think there was a date on the
22 bottom of the transmission that if he didn't
23 hear from me by a certain date, he was
24 withdrawing it. I don't think there was any
25 communication from me to him.

1 C. Herbst

2 Q Okay, Mr. Kelly wound up making a
3 second offer. Do you remember that correctly
4 that there were two e-mails from Mr. Kelly?

5 MR. SKIBELL: Objection to
6 form.

7 A I don't remember a second e-mail.

8 Q As far as you know, the first time
9 he presented an offer it had an ultimatum where
10 you had to respond?

11 A Yes.

12 Q You never responded to Mr. Kelly's
13 offer?

14 A I did not respond before the
15 ultimatum passed.

16 Q Did you ever respond at all?

17 A I don't believe I did.

18 Q Just so I get the timeline right,
19 you have been working with Mr. Kelly for over 20
20 years, correct?

21 A Correct.

22 Q Blade approaches you about the
23 three of you working together, Shoreline, you,
24 and Blade, correct?

25 A Correct.

1 C. Herbst

2 MR. SKIBELL: Objection.

3 Q That's the end of January of 2018?

4 A Somewhere in the beginning of the
5 year, yes.

6 Q You are interested in that. You
7 testified how you thought that had potential for
8 all three parties, correct?

9 A Yes.

10 Q You have a meeting with all three
11 parties at the Westhampton Airport on April 6,
12 correct?

13 A Correct.

14 Q And then on April 13 John Kelly
15 makes an offer to you to purchase your business?

16 A Correct.

17 Q At this point in time you know
18 that John Kelly is not interested in the Blade
19 transaction, correct?

20 A Correct.

21 Q Instead he makes an offer to you
22 on approximately April 13?

23 A Correct.

24 Q And you never responded?

25 A Correct.

1 C. Herbst

2 Q In that context you testified
3 earlier you felt you dealt fairly with
4 Mr. Kelly. Is this fair when someone has been
5 working with you for 20 years and they make you
6 an offer to not even respond?

7 A I would say it depends on what the
8 offer was. That particular offer was not much
9 of an offer.

10 Q Was it insulting?

11 A Yes.

12 Q Why was it insulting?

13 A Using my own money for the down
14 payment and then not going to pay for three
15 years out.

16 Q But you didn't want to tell him
17 that?

18 A I didn't feel the need to tell him
19 that.

20 Q After Mr. Kelly made the offer to
21 you, I know you testified you didn't respond,
22 but did anyone else ever respond on your behalf?

23 A I think there was some
24 transmissions between he and Ryan. I don't know
25 that Ryan declined the offer or accepted the

1 C. Herbst

2 offer. That's not his place, but that's it. I
3 was visiting colleges with my daughter at the
4 time so I was really tied up with a lot of
5 different things going on, that being one of
6 them.

7 Q After Mr. Kelly presents the offer
8 to you, that was the time you were visiting
9 colleges with your daughter and Mr. Pilla gets
10 back to Mr. Kelly on your behalf?

11 MR. SKIBELL: Objection;
12 misstates testimony.

13 Q Is that what happened?

14 MR. SKIBELL: Objection.

15 A I do not know if Mr. Kelly went to
16 Ryan first or if Ryan went to Mr. Kelly. I want
17 to say Mr. Kelly went to Ryan first.

18 Q Was that because he hadn't heard a
19 response from you?

20 A I would assume, yes.

21 Q Did Mr. Kelly make efforts to
22 reach you by phone as well?

23 A I don't know.

24 Q You didn't feel that Mr. Kelly
25 deserved any response from you?

1 C. Herbst

2 MR. SKIBELL: Objection;
3 asked and answered.

4 A I don't believe so.

5 Q Did there come a time when you
6 came to learn that Mr. Kelly was sick with
7 cancer?

8 A I did not know that he was sick
9 until just before he passed away. I had no
10 idea.

11 Q When was that?

12 A April of 2019.

13 Q Until April of 2019 you did not
14 know Mr. Kelly was sick?

15 A I had no idea.

16 Q What do you know about the
17 communications that Mr. Pilla had with Mr. Kelly
18 after he presented the offer to you on about
19 April 13?

20 A I would say in the nutshell
21 because without looking at the exhibits, without
22 having it in front of me, the communication was
23 basically, you know, what do you want to do
24 about this, or could you come up higher; do you
25 want assets, what have you. I don't know who

1 C. Herbst

2 said what without looking. There was some other
3 conversations about the offer in that regard.

4 Q Did Mr. Kelly express to Mr. Pilla
5 any frustration that he wasn't able to reach
6 you?

7 A I think so. At the time, you
8 know, I mentioned I was traveling to colleges,
9 but I was also sick so I was out for a bit sick.
10 I was out of my office from May 1 to May 7 as
11 well. It was difficult in April; I was visiting
12 colleges, I was sick in April, and I was out for
13 a week in May.

14 Q You not getting back to Mr. Kelly
15 after the offer was due in part to the fact that
16 you were traveling, visiting colleges, and sick?

17 A Yes, there were a lot of things I
18 was thinking about. I had Blade offers,
19 Shoreline offers, I had program delays. There
20 was a lot going on at the time. I was on my
21 schedule, no one else's schedule.

22 Q Did you have enough time to
23 negotiate with Blade at that point in time?

24 A There were back and forths with
25 Blade but nothing was solidified until weeks in

1 C. Herbst

2 May.

3 Q What do you mean by back and
4 forths with Blade?

5 A There were different scenarios.
6 There were different options, offers. Things
7 changed rapidly. You know, there was a point in
8 time that Blade may not have been able to
9 operate at the airport. There were different
10 things going on so the offers, the scenarios to
11 buy changed.

12 Q And that's all taking place, the
13 back and forths are happening during the month
14 of April of 2018?

15 A April and May. End of April,
16 beginning of May.

17 Q What is going back and forth? Was
18 it e-mail communications between you and Blade?

19 A Yes.

20 Q Were specific offers made to you
21 by Blade?

22 A Yes.

23 Q During the month of April?

24 A I would have to look at the
25 e-mails to remind myself of the dates.

1 C. Herbst

2 Q You ultimately entered into a deal
3 with Blade, correct?

4 A Yes.

5 Q When did you enter into that deal?

6 A That deal was finalized on or
7 about May 14 or 15.

8 Q What were the terms of that deal?

9 A The terms I believe it was
10 \$175,000 for the client list. There was a
11 consulting piece of it that was \$5,000 a month I
12 believe for four months, maybe five months, and
13 10 percent commissions on my sales.

14 Q Would you use your computer system
15 or Blade's?

16 A I would be using Blade's platform
17 for all of my reservations.

18 Q That would include Blade putting
19 in all of what you described as your customer
20 information into Blade's platform?

21 A Correct.

22 Q You testified earlier that you had
23 some very serious concerns about putting your
24 information into a new Shoreline platform. Did
25 you have similar concerns about putting that